



December 17, 1997

Ms. Brenda Pohlmann  
Remediation Branch Supervisor  
Nevada Division of Environmental Protection  
555 E. Washington, Suite 4300  
Las Vegas, NV 89101

Dear Ms. Pohlman:

Subject: Perchlorate Consent Agreement

Kerr-McGee Chemical Corporation (KMCC) received a request from Lew Dodgion to work towards development of a Consent Agreement to cover activities associated with investigation of perchlorate impact at KMCC's Henderson, Nevada, facility

Mr. Dodgion provided a template Consent Agreement which he requested that KMCC review and return to NDEP with comments. Attached is a redline version of that original template with modification noted. New text is underlined; removed text is struck out.

In addition, there are two sections which will need consideration and probable modification. KMCC was reluctant to modify these without prior discussion with NDEP. These sections are:

- Section V, Paragraph 2 - Public Participation.  
Section V, Paragraph 2 discusses the method of ensuring the public is informed and that they have opportunity for comment. NDEP will need to consider how this is done. Current text explains that the information exchange will occur in conjunction with the Public Involvement Plan, a part of the BMI Common Areas Phase 2 Consent Agreement. This may be the most effective process, but this determination should be made.
- Section XVII - Reimbursement of Division Oversight Costs.  
Section XVII discusses the method for reimbursement of NDEP costs associated with assessment of perchlorate impact at Henderson, Nevada. KMCC does not believe that inclusion of these costs in the HISSC Phase II reimbursement invoices is appropriate. A determination will be required to develop an appropriate means for Division reimbursement.

Kerr-McGee is committed to act responsibly and cooperate fully with local, state, and federal officials in determining appropriate remedial actions. Please feel free to contact me at (702) 651-2200 if you have any questions related to this information. Thank you.

Sincerely,

  
Susan M. Crowley  
Staff Environmental Specialist

By certified mail  
cc: PSCorbett  
PBDizikes  
ALDooley  
RHJones

Robert Kelso (NDEP)  
J. Reichenberger  
~~Bob~~ Doug Zimmerman (NDEP)

1  
2  
3  
4  
5                   **CONSENT AGREEMENT**

6           This Consent Agreement (the "Consent Agreement") is made and  
7 | entered into this ~~1<sup>st</sup>~~-\_\_\_\_ day of ~~August~~\_\_\_\_, 1996\_\_, by and  
8 | between the State of Nevada, Department of Conservation and  
9 | Natural Resources, Division of Environmental Protection (the  
10 | "Division") and Kerr-McGee Chemical Corporation (the "Company").  
11 | The Company and the Division are referred to collectively herein  
12 | as the "Parties."

13           **WHEREAS**, the Division is designated as the state water  
14 | pollution control agency for Nevada and is empowered to  
15 | administer and enforce the Nevada Water Pollution Control Law,  
16 | Nevada Revised Statutes ("NRS") §§ 445.131 to 445.354, inclusive;  
17 | and

18           **WHEREAS**, the Division is designated as the state agency for  
19 | the regulation of hazardous waste and is empowered to administer  
20 | and enforce the Nevada Hazardous Waste Disposal Law, NRS §§  
21 | 459.400 to 459.600, inclusive; and

22 |       **WHEREAS**, in March 1997, the State of California developed a  
23 | method of analysis of drinking water supplies for the presence of  
24 | "perchlorate" at levels much lower than historically had been the  
25 | norm (parts per billion in contrast to parts per million) and

1 application of this new method has indicated the presence of  
2 perchlorate at the parts-per-billion level in Lake Mead and the  
3 Colorado River Basin;

4 WHEREAS, perchlorate has not heretofore been included on  
5 lists of hazardous substances or of hazardous constituents  
6 developed by the federal Environmental Protection Agency ("EPA"),  
7 and its human health effects are not understood, and accordingly,  
8 concerned parties including EPA, the State of Nevada and present  
9 and historical manufacturers of ammonium perchlorate, a rocket  
10 fuel, are seeking to improve toxicological information regarding  
11 perchlorate, improve analytical protocols, and find technological  
12 and regulatory solutions to the potential problem of perchlorate  
13 in public drinking water supplies;

14 WHEREAS, the Company has since 1968 owned and operated a  
15 plant at Henderson, Nevada used to produce ammonium perchlorate,  
16 which same facility was previously operated by the United States  
17 Navy and others to manufacture perchlorate products, including  
18 sodium perchlorate and potassium perchlorate;

19 WHEREAS, in Henderson, to the northwest of the Company's  
20 facility, ammonium perchlorate was manufactured for approximately  
21 30 years by Pacific Engineering and Production Co. of Nevada  
22 (PEPCON);

23 WHEREAS, sampling of groundwater at the Company's and  
24 PEPCON's sites and in areas to the north and east of these

1 facilities approaching the Las Vegas Wash indicates elevated  
2 levels of perchlorate in groundwater which are presumptively  
3 associated with historical operations at the Company's and  
4 PEPCON's facilities;

5 ~~WHEREAS, the Division has communicated to the Company its~~  
6 ~~intention to require the investigation, characterization and, if~~  
7 ~~necessary, remediation of Releases at or associated with the Site~~  
8 ~~which may pose a threat to human health, welfare, or the~~  
9 ~~Environment resulting from industrial operations and~~  
10 ~~Environmental Contaminant management activities at or associated~~  
11 ~~with the Company's Site, and~~

12 WHEREAS, the Division has communicated to the Company and  
13 PEPCON its intention to require the investigation,  
14 characterization and, if necessary and feasible, remediation of  
15 Releases of perchlorate at or associated with these two sites  
16 which may pose a threat to human health, welfare or the  
17 environment;

18 ~~WHEREAS, the Company desires to cooperate fully with the~~  
19 ~~Division to investigate, characterize and, if necessary,~~  
20 ~~remediate in a prompt and satisfactory manner Releases at or~~  
21 ~~associated with the Site which may pose a threat to human health,~~  
22 ~~welfare, or the Environment, and~~

23 WHEREAS, the Company desires to cooperate fully with the  
24 Division to investigate, characterize and, if necessary and

1 feasible, remediate in a prompt and satisfactory manner releases  
2 of perchlorate at or associated with the Site which may pose a  
3 threat to human health, welfare or the environment and agrees  
4 that these steps should take place pursuant to this agreement,  
5 while taking due account of, and where necessary and appropriate  
6 coordinating with, other environmental response activities  
7 ongoing at Henderson, including: (1) the Company's Phase II  
8 consent agreement of August 1, 1996, with the Division governing  
9 investigation and remedial planning with regard to other releases  
10 of "Environmental Contaminants" at or associated with the  
11 Company's site; (2) the Phase II consent agreement of February  
12 23, 1996, between the Division, Montrose Chemical Corporation of  
13 California, Inc., Pioneer Chlor Alkali Company, Inc., Stauffer  
14 Management Company, Titanium Metals Corporation, Basic  
15 Management, Inc. and the Company, regarding releases of  
16 "Environmental Contaminants" at or associated with the Basic  
17 Management, Inc. Industrial Complex; and (3) any consent  
18 agreement addressing release of perchlorate that the Division may  
19 achieve with PEPCON.

20 ~~WHEREAS, on April 25, 1991, the Division and Chemstar, Inc.,~~  
21 ~~Kerr McGee Chemical Corporation, Montrose Chemical Corporation of~~  
22 ~~California, Inc., Pioneer Chlor Alkali Company, Inc., Stauffer~~  
23 ~~Management Company and Titanium Metals Corporation entered into a~~  
24 ~~consent agreement ("Phase 1 Consent Agreement") regarding the~~  
25 ~~first phase of a contemplated phased approach to the assessment~~

1 ~~and remediation, if necessary, of Environmental conditions at or~~  
2 ~~associated with the BMI Complex, consisting of the following~~  
3 ~~three phases. Phase 1 the development of Phase 1 environmental~~  
4 ~~conditions assessment reports detailing information regarding the~~  
5 ~~BMI Complex, Phase 2 if determined by the Division to be~~  
6 ~~necessary to protect human health, welfare, or the Environment,~~  
7 ~~the performance of environmental investigations to fill in any~~  
8 ~~data gaps identified by the Phase 1 reports, Phase 3 if~~  
9 ~~determined by the Division to be necessary to protect human~~  
10 ~~health, welfare, or the Environment, identification and~~  
11 ~~implementation of appropriate remedial measures to address~~  
12 ~~environmental conditions identified in Phases 1 and 2, and~~

13 ~~WHEREAS, pursuant to the Phase 1 Consent Agreement, the~~  
14 ~~Company which signed the Phase I Consent Agreement submitted to~~  
15 ~~the Division on April 14, 1993. Phase I Environmental Conditions~~  
16 ~~Assessment for the Kerr McGee Chemical Corporation Henderson,~~  
17 ~~Nevada Facility ("Phase 1 Report"), and~~

18 ~~WHEREAS, the Division has determined, based upon its review~~  
19 ~~of the Phase 1 Report, that additional work is necessary to~~  
20 ~~gather additional information and data concerning the Site.~~  
21 ~~Those areas or issues for which the Division requires the~~  
22 ~~Company to evaluate and characterize the nature and extent of~~  
23 ~~Releases within or associated with the Site were finalized in a~~  
24 ~~Letter of Understanding dated August 15, 1994, which is attached~~  
25 ~~hereto as Attachment A. Through this Consent Agreement the~~

1 ~~Company, if required by the Division, shall commence the process~~  
2 ~~of developing and evaluating appropriate remedial alternatives,~~  
3 ~~and~~

4 WHEREAS, the Division and the Company have agreed to enter  
5 into this Consent Agreement regarding such ~~additional work.~~

6 NOW, THEREFORE, in consideration of and in exchange for the  
7 mutual undertakings and covenants herein, and intending to be  
8 legally bound hereby, the Division and the Company agree as  
9 follows:

10  
11 I. DEFINITIONS

12 The following terms shall have the meanings specified for  
13 purposes of this Consent Agreement:

14 1. Administrator means the Administrator of the Nevada  
15 Division of Environmental Protection.

16 ~~2. BMI means Basic Management, Inc.~~

17 ~~3. BMI Company or BMI Companies means BMI, Kerr McGee~~  
18 ~~Chemical Corporation, Pioneer Chlor Alkali Company,~~  
19 ~~Inc.<sup>1/</sup>, and Titanium Metals Corporation, individually~~  
20 ~~or collectively, respectively, or their respective~~  
21 ~~successors or assigns with respect to ownership or~~

---

<sup>1/</sup> In 1988, Pioneer Chlor-Alkali Company, Inc. became the owner and operator of certain real property and improvements located at the BMI Complex which, during an earlier time period, had been owned and operated by Stauffer Chemical Company. Stauffer Management Company neither owns nor operates any real property or improvements located at the BMI Complex.

~~operation of any portion of the Site or the BMI  
Complex.~~

~~2.4.~~ BMI Common Areas Phase 2 Consent Agreement means the  
Consent Agreement made and entered into on February 23,  
1996, by and among the Division and Kerr-McGee Chemical  
Corporation, Montrose Chemical Corporation of  
California, Inc., Pioneer Chlor Alkali Company, Inc.,  
Stauffer Management Company, Titanium Metals  
Corporation and Basic Management, Inc.

~~3.5.~~ BMI Complex means the Basic Management, Inc. Industrial  
Complex located in Clark County, Nevada, and includes  
all land, structures, other appurtenances, and  
improvements on the land owned or operated as of April  
15, 1993 by the BMI Companies or any of them, or  
Montrose Chemical Corporation of California, Inc.,  
except those properties identified in letters from BMI  
to the Division dated November 1, 1991 (acknowledged  
January 23, 1992), and April 9, 1992 (acknowledged June  
19, 1992), respectively, attached hereto as Attachment  
B.

~~4.6.~~ Company means Kerr-McGee Chemical Corporation.

~~5.7.~~ Consent Agreement means this Consent Agreement and  
includes all attachments, Division-approved ~~workplans~~ Workplans  
(including schedules and attachments), Division-  
approved Deliverables, amendments, modifications and

items incorporated by reference as provided in Section XXVIII.

~~6.8-~~ Contractor means any entity or person, including any contractor, subcontractor, consultant, firm or laboratory, retained by the Company or the Division to conduct or monitor any portion of the work performed pursuant to this Consent Agreement.

~~7.9-~~ Deliverable means, without limitation, any ~~w~~Workplan, report, progress report, plan, data, document, information, submittal, obligation or work which the Company is required to submit to the Division under the terms of this Consent Agreement.

~~8.10-~~ Division means the State of Nevada, Department of Conservation and Natural Resources, Division of Environmental Protection, or its successor department or agency of the State of Nevada.

~~9.11-~~ Effective Date means the date on which this Consent Agreement becomes effective, as specified in Section XXIX. The effective period of this Consent Agreement means the period of time between the Effective Date and the date upon which this Consent Agreement terminates as specified in Section XXX.

~~10.12-~~ Environment means air, land (including subsurface strata), and water (including groundwater) or any combination or part thereof.

1 ~~13. Environmental Contaminant means any element, compound,~~  
2 ~~mixture, solution or substance, the Release of which~~  
3 ~~may present a substantial endangerment to human health,~~  
4 ~~welfare, or the Environment regulated by the Division~~  
5 ~~under any applicable Environmental Law including,~~  
6 ~~without limitation, any "solid waste," "hazardous~~  
7 ~~waste," "hazardous constituent," "hazardous substance,"~~  
8 ~~"regulated substance," "pollutant," "contaminant,"~~  
9 ~~"radioactive material," "air contaminant," "imminently~~  
10 ~~hazardous chemical substance or mixture," "hazardous~~  
11 ~~material," or other substance so defined by any~~  
12 ~~applicable Environmental Law.~~

13 ~~14. Environmental Law means each federal and state law and~~  
14 ~~regulation relating in any way to Environmental~~  
15 ~~pollution or the protection of the Environment or the~~  
16 ~~Release of any Environmental Contaminant into the~~  
17 ~~Environment including, without limitation, the Nevada~~  
18 ~~Water Pollution Control Law, NRS §§ 445.131 to 445.354,~~  
19 ~~the Nevada Solid Waste Disposal Law, NRS §§ 444.440 to~~  
20 ~~444.650, the Nevada Hazardous Waste Disposal Law, NRS~~  
21 ~~§§ 459.400 to 459.600, the Nevada Air Pollution Control~~  
22 ~~Law, NRS §§ 445.401 to 445.710, the Nevada Underground~~  
23 ~~Storage Tank Law, NRS §§ 459.800 to 459.856, the Nevada~~  
24 ~~Radiation Control Law, NRS §§ 459.010 to 459.290, the~~  
25 ~~Clean Air Act, 42 U.S.C. §§ 7401-7671q, the Federal~~

1 ~~Water Pollution Control Act, 33 U.S.C. §§ 1251-1387,~~  
2 ~~the Solid Waste Disposal Act, as amended by the~~  
3 ~~Resource Conservation and Recovery Act, 42 U.S.C. §§~~  
4 ~~6901-6992k, the Comprehensive Environmental Response,~~  
5 ~~Compensation, and Liability Act, 42 U.S.C. §§ 9601-~~  
6 ~~9675, and the Toxic Substances Control Act, 15 U.S.C.~~  
7 ~~§§ 2601-2692, each as may be amended from time to time,~~  
8 ~~and including the implementing regulations promulgated~~  
9 ~~respectively thereunder.~~

10 ~~11.15.~~ EPA means the United States Environmental  
11 Protection Agency or its successor department or  
12 agency.

13 ~~12.16.~~ NAC means the Nevada Administrative Code or its  
14 successor codification of rules and regulations.

15 ~~13.17.~~ NRS means the Nevada Revised Statutes or its  
16 successor codification.

17 ~~14.18.~~ Receptor means any appropriate and representative  
18 population, community or habitat of any biological  
19 organism (including humans, animals and plants) which  
20 is or may be affected by Releases of ~~Environmental~~  
21 ~~Contaminants~~ perchlorate at or associated with the  
22 Site.

23 ~~15.19.~~ Release means any past or present spilling,  
24 leaking, pumping, pouring, emitting, emptying,  
25 discharging, injecting, escaping, leaching, migrating,

1 dumping, or disposing of ~~any Environmental Contaminant~~  
2 perchlorate into the Environment (including the  
3 abandonment or discarding of barrels, containers, and  
4 other closed receptacles containing any  
5 perchlorate~~Environmental Contaminant~~).

6 ~~16.20.~~ Site means all land, structures, other  
7 appurtenances, and improvements on the land located at  
8 that portion of the BMI Complex, as more particularly  
9 described in Attachment EA.

10 ~~17.21.~~ State means the State of Nevada, including, as  
11 appropriate, its agencies, departments, political  
12 subdivisions, agents and employees.

13 ~~22. Study Item means the location of each Release, waste~~  
14 ~~management unit or facility, Environmental Contaminant~~  
15 ~~source, or issue of concern at or associated with the~~  
16 ~~Site which is either identified in Attachment A as a~~  
17 ~~Study Item or an area of additional work under Section~~  
18 ~~IV(D) (Additional, Alternative or Accelerated Work).~~

## 20 II. STATEMENT OF PURPOSE

21 In entering into this Consent Agreement, the mutual  
22 objectives of the Division and the Company are: (1) to perform  
23 ~~an Environmental~~ Perchlorate Conditions Investigation of  
24 perchlorate contamination as described in Section IV.A; ~~-(2) to~~  
25 ~~address the post closure permitting requirements of the federal~~

~~Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (42 U.S.C. §§ 6901-6992k) and the Nevada Hazardous Waste Disposal Law (NRS §§ 459.400 to 459.600), and the regulations promulgated respectively thereunder, as required for a RCRA regulated site, and (23) to perform such Remedial Alternative Study(ies), or Interim Remedial Measures or Additional Work as provided in Section IV. The Parties intend that the work to be performed in accordance with Section IV (including all approved Workplans), and accepted by the Division, will be consistent with the National Contingency Plan, 40 C.F.R. § 300.1 et seq.~~

### III. PARTIES BOUND

1. The provisions of this Consent Agreement shall apply to and be binding upon the Division, including the Department of Conservation and Natural Resources (the "Department"), and upon the Company, its successors and assigns.

2. In 1998 Kerr-McGee Chemical Corporation will be merged into Kerr-McGee Chemical LLC. This merger and change of name will in no way alter the Company's responsibilities under this Consent Agreement. The Company has signed an agreement for sale of its ammonium perchlorate business to PEPCON. No conveyance of real property interest in the Site will result should this sale become effective. Any change in ownership or corporate or partnership status of the Company and any conveyance of title,

1 easement, or other real property interest in the Site, or a  
2 portion of the Site, shall in no way alter the Company's  
3 responsibilities under this Consent Agreement. In the event that  
4 the Company proposes to sell or transfer all or a portion of the  
5 Site, or any real property subject to this Consent Agreement,  
6 such Company shall, prior to such sale or transfer, provide  
7 written notice to such purchaser or transferee of the existence  
8 and terms of this Consent Agreement and any ~~Environmental~~  
9 Perchlorate Conditions Investigation, and shall provide written  
10 notice to the Division concerning the sale or transfer not later  
11 than fifteen (15) days after such sale or transfer. Such Company  
12 shall also obtain, and provide to the Division a copy of, a  
13 written undertaking from any purchaser in connection with such  
14 sale or transfer that said purchaser will comply with the  
15 foregoing notice requirements in connection with any subsequent  
16 transfer of such real property.

17 3. The Company shall provide a copy of this Consent  
18 Agreement to all Contractors retained by it to conduct or monitor  
19 any portion of the work performed under this Consent Agreement  
20 not more than fourteen (14) days after either the Effective Date  
21 of this Consent Agreement or the date on which such Contractor is  
22 retained, whichever is later. The Company shall use best efforts  
23 to cause such persons or entities to comply with the terms of  
24 this Consent Agreement.

25 4. The Company agrees to undertake all actions required by

1 the terms and conditions of this Consent Agreement, including any  
2 portions of this Consent Agreement that are incorporated by  
3 reference and made enforceable hereunder as specified in Section  
4 XXVIII.

5 5. The undersigned representative of each Party to this  
6 Consent Agreement certifies that he or she is fully authorized by  
7 the Party whom he or she represents to enter into the terms and  
8 conditions of this Consent Agreement and to execute and legally  
9 bind that Party to it.

10 ~~6. Within thirty (30) days after the Effective Date, the~~  
11 ~~Company shall cause to be recorded at the Clark County Recorder's~~  
12 ~~Office notices of obligation, as necessary, to provide access~~  
13 ~~under Section X and related covenants.~~

#### 14 15 IV. WORK TO BE PERFORMED

16 The Company agrees to perform the work specified in this  
17 Consent Agreement in the manner and by the dates specified  
18 herein. ~~(including the attached Letter of Understanding).~~ All  
19 work undertaken pursuant to this Consent Agreement by the Company  
20 and/or its Contractor(s) shall be performed pursuant to the  
21 Division-approved ~~W~~Workplans required hereunder, and in a manner  
22 consistent with all applicable federal and Nevada statutes and  
23 their implementing regulations, including all applicable  
24 Environmental Laws. The Parties shall also consider applicable  
25 or relevant EPA or Division guidance documents identified by the

1 Division, including the October 1995 guidance for an  
2 Environmental Conditions Investigation and the February 1996  
3 guidance for a Remedial Alternatives Study, and provided to the  
4 Company by the Division.

5  
6 **A. ~~ENVIRONMENTAL PERCHLORATE~~ CONDITIONS INVESTIGATION.**

7 1. Within sixty (60) days after the effective date of this  
8 Consent Agreement, the Company shall submit to the Division for  
9 its review and approval ~~an Environmental Perchlorate~~ Conditions  
10 Investigation Workplan. The ~~Environmental Perchlorate~~ Conditions  
11 Investigation Workplan is subject to approval by the Division in  
12 accordance with Section VII (Deliverables Requiring Division  
13 Approval).

14 2. The ~~Environmental Perchlorate~~ Conditions Investigation  
15 Workplan shall detail the activities, procedures and  
16 methodologies the Company shall undertake and use to perform the  
17 ~~Study Item~~ characterization, evaluation or information-gathering  
18 ~~needed under this agreement. requirements set forth in the~~  
19 ~~Letter of Understanding attached hereto as Attachment A.~~ A  
20 specific schedule for the implementation of all ~~Environmental~~  
21 ~~Perchlorate~~ Conditions Investigation activities shall be included  
22 in the ~~Environmental Perchlorate~~ Conditions Investigation  
23 Workplan. Such schedule shall provide for the appropriate  
24 phasing of ~~Environmental Perchlorate~~ Conditions Investigation  
25 activities and the submission of deliverables to the Division

~~(including the submission of discrete portions of the~~  
~~Environmental Conditions Investigation Report as investigatory~~  
~~work concerning specific Study Items is completed)~~ so as to  
achieve the efficient and timely completion of the  
Environmental Perchlorate Conditions Investigation in a manner  
consistent with appropriate Division oversight, ~~and with~~  
~~appropriate consideration of the complexity and scope of, and~~  
~~interrelationships among, specific Study Items.~~ The  
Environmental Perchlorate Conditions Investigation shall result  
in data of adequate technical quality to support the development  
and evaluation of remedial alternatives during a subsequent study  
(including, without limitation, any Remedial Alternatives Study).

3. Concurrent with the submission of the ~~Environmental~~  
Perchlorate Conditions Investigation Workplan, the Company shall  
submit solely for the Division's information purposes a Health  
and Safety Plan. The Company may submit a single Health and  
Safety Plan that addresses all investigations and activities  
required pursuant to this Consent Agreement. Notwithstanding any  
other provision of this Consent Agreement, no Division approval,  
disapproval, decision or determination (or the absence thereof)  
rendered pursuant to this Consent Agreement on the matters  
addressed herein shall constitute, or be deemed by any entity or  
person to constitute, an express or implied approval,  
endorsement, opinion or determination of or by the Division with  
respect to any health or safety practice, standard or procedure

1 proposed, implemented or complied with by any person or entity  
2 whatsoever in conjunction with any activities conducted pursuant  
3 or in any way relating to this Consent Agreement.

4 B. REMEDIAL ALTERNATIVES STUDY.

5 1. Following Division approval of ~~any portion of, or the~~  
6 ~~entirety of, the Environmental Perchlorate~~ Conditions  
7 Investigation Report, ~~pertaining to one or more Study Items, the~~  
8 Company shall, submit to the Division for its review and approval  
9 a Remedial Alternatives Study Workplan within 60 days following  
10 receipt of a written notice from the Division specifying the  
11 reasons it believes a Remedial Alternatives Study is necessary. ~~7~~  
12 ~~submit to the Division for its review and approval a Remedial~~  
13 ~~Alternatives Study Workplan addressing each Study Item identified~~  
14 ~~in the Division's notice. Each~~ The Remedial Alternatives Study  
15 Workplan so submitted is subject to approval by the Division in  
16 accordance with Section VI (Deliverables Requiring Division  
17 Approval).

18 2. A specific schedule for the implementation of all  
19 Remedial Alternatives Study activities shall be included in the  
20 ~~each Remedial Alternatives Study Workplan.~~ Such schedule shall  
21 provide for the appropriate phasing of Remedial Alternatives  
22 Study activities and Deliverable submissions so as to achieve the  
23 efficient and timely completion of the Remedial Alternatives  
24 Study in a manner consistent with appropriate Division oversight,  
25 ~~and with appropriate consideration of the complexity and scope~~

~~of, and interrelationships among, specific Study Items.~~

3. Any determination made by the Division pursuant to this Section IV.B and any work undertaken pursuant to an approved Remedial Alternatives Study Workplan shall be subject to the other provisions of this Consent Agreement, including without limitation, the provisions of Section XV (Dispute Resolution). However, judgments, conclusions or recommendations included in any Deliverable submitted by the Company pursuant to a Division-approved Remedial Alternatives Study Workplan shall not be subject to Division approval pursuant to Section VI herein.

~~C. INTERIM REMEDIAL MEASURES.~~

~~1. If, at any time during the effective period of this Consent Agreement, the Division determines, based upon consideration of any of the factors specified in paragraph 2 below, that any Release or threatened Release at or associated with the Site may pose an imminent and substantial hazard to human health, welfare, or the Environment, the Division may notify the Company in writing of the measure(s) the Division has determined need to be developed and implemented by the Company to mitigate the imminent and substantial hazard ("Interim Measure(s)"). If deemed appropriate by the Division, the identification of such Interim Measure(s) may be deferred pending the collection by the Company of additional data or information requested by the Division. Upon receiving such written notice, the Division and the Company shall negotiate in good faith~~

1 ~~whether and to what extent such Interim Measures are required.~~

2 ~~2. The following factors may be considered by the~~  
3 ~~Division, inter alia, in determining whether any Interim~~  
4 ~~Measure(s) should be required.~~

5  
6 ~~a. the time required to develop and implement a final~~  
7 ~~remedial measure,~~

8  
9 ~~b. actual or potential exposure of nearby Receptors to~~  
10 ~~Environmental Contaminants,~~

11  
12 ~~c. actual or potential contamination of drinking water~~  
13 ~~supplies or sensitive ecosystems,~~

14  
15 ~~d. further degradation of the Environmental medium which~~  
16 ~~may occur if an Interim Measure is not implemented~~  
17 ~~expeditiously,~~

18  
19 ~~e. the presence of Environmental Contaminants in drums,~~  
20 ~~barrels, tanks, or other bulk storage or disposal~~  
21 ~~containers or facilities that may pose a threat of~~  
22 ~~Release,~~

23  
24 ~~f. weather conditions that may cause Environmental~~  
25 ~~Contaminants to be Released,~~

26  
27 ~~g. risks of fire or explosion, or potential for exposure~~  
28 ~~to Environmental Contaminants as a result of an~~  
29 ~~accident or failure of a container, facility, or~~  
30 ~~handling system, or~~

31  
32 ~~h. any other factor that may indicate the existence of a~~  
33 ~~threat to human health, welfare, or the Environment.~~

34  
35 ~~3. If, at any time during the effective period of this~~

36 ~~Consent Agreement, the Company determines that~~

37 ~~information or data has been identified or developed~~

38 ~~indicating that any Release or threatened Release at or~~

39 ~~associated with the Site poses a potential threat to~~

40 ~~human health, welfare, or the Environment of a degree~~

41 ~~as reasonably requires the prompt development and~~

1 ~~implementation of an Interim Measure(s), the Company~~  
2 ~~shall so notify the Division (1) orally within twenty-~~  
3 ~~four (24) hours, and (2) in writing within three (3)~~  
4 ~~days following the making of such determination,~~  
5 ~~summarizing the immediacy and magnitude of the~~  
6 ~~potential threat.~~

7 ~~4. Within sixty (60) days following any agreement by the~~  
8 ~~Division and the Company regarding the proposed Interim Measures~~  
9 ~~that are the subject of a Division notification pursuant to~~  
10 ~~paragraph 1, the Company shall submit to the Division a workplan~~  
11 ~~for the development and implementation of Interim Measure(s)~~  
12 ~~("Interim Measure(s) Workplan") as identified in such~~  
13 ~~notification. Each Interim Measure(s) Workplan is subject to~~  
14 ~~approval by the Division. Each Interim Measure(s) Workplan shall~~  
15 ~~address, as appropriate and without limitation.~~

16  
17 ~~a. objectives of the Interim Measure(s),~~

18  
19 ~~b. technical approach,~~

20  
21 ~~c. engineering design and planning (including Division~~  
22 ~~approval of all design plans and specifications),~~

23  
24 ~~d. schedule for development and implementation of the~~  
25 ~~Interim Measure(s),~~

26  
27 ~~e. qualifications of personnel performing the development~~  
28 ~~or implementation of the Interim Measure(s), including~~  
29 ~~Contractor personnel,~~

30  
31 ~~f. health and safety planning,~~

32  
33 ~~g. data collection quality assurance, strategy,~~  
34 ~~management, and analysis,~~

35  
36 ~~h. construction quality assurance, including inspection~~  
37 ~~activities, sampling requirements, documentation and~~  
38 ~~certification of construction consistent with Division-~~  
39 ~~approved designs,~~

40  
41 ~~i. operation and maintenance of the Interim Measure(s),~~

42  
43 ~~j. document/data submittals for Division approval, and~~  
44

1 ~~k. regular progress reporting during the development and~~  
2 ~~implementation of the Interim Measure(s).~~

3  
4 ~~5. Interim Measure(s) shall, to the extent practicable, be~~  
5 ~~consistent with the objectives of, and contribute to the~~  
6 ~~performance of, any long term solution at the Site.~~

7 ~~6. In the event that the Company and the Division reach~~  
8 ~~agreement with respect to an Interim Measure(s) Workplan, any~~  
9 ~~work undertaken by the Company pursuant thereto shall be governed~~  
10 ~~by the other provisions of this Consent Agreement, including~~  
11 ~~without limitation, the provisions of Section XV (Dispute~~  
12 ~~Resolution). In the event that the Company and the Division are~~  
13 ~~unable to reach agreement with respect to the need for or~~  
14 ~~contents of an Interim Measure(s) Study Workplan, the Division~~  
15 ~~and the Company shall be entitled to exercise their rights~~  
16 ~~pursuant to Section XIX (Reservation of Rights).~~

17 ~~D. ADDITIONAL, ALTERNATIVE OR ACCELERATED WORK.~~

18 ~~1. The Company may propose that certain response actions,~~  
19 ~~including, without limitation, investigatory or characterization~~  
20 ~~work, engineering evaluation, or procedure/methodology~~  
21 ~~modifications, are necessary in addition to, in lieu of, or on an~~  
22 ~~accelerated schedule relative to the tasks, schedules and~~  
23 ~~Deliverables required pursuant to this Consent Agreement in order~~  
24 ~~to address appropriately the investigation, characterization,~~  
25 ~~evaluation, abatement, minimization, stabilization, mitigation,~~

1 ~~or elimination of Environmental Contaminants at or associated~~  
2 ~~with the Site or any particular Study Item. If the Division~~  
3 ~~agrees with the Company's additional, alternative or accelerated~~  
4 ~~work proposal, the Division will notify the Company in writing.~~  
5 ~~Thereafter, the Company shall perform the additional work~~  
6 ~~according to a workplan prepared by the Company and approved by~~  
7 ~~the Division (or a modification to an existing Division approved~~  
8 ~~workplan). All additional work performed by any Company under~~  
9 ~~this paragraph shall be performed in a manner consistent with~~  
10 ~~this Consent Agreement. Nothing in this Section shall affect the~~  
11 ~~Parties' reserved rights under Section XIX of this Consent~~  
12 ~~Agreement.~~

13 ~~2. If the Division determines that additional work,~~  
14 ~~including, without limitation, investigatory or characterization~~  
15 ~~work, engineering evaluation, or procedure/methodology~~  
16 ~~modifications, is necessary in order to address appropriately the~~  
17 ~~investigation, characterization, evaluation, abatement,~~  
18 ~~minimization, stabilization, mitigation, or elimination of~~  
19 ~~Environmental Contaminants at or associated with the Site or any~~  
20 ~~particular Study Item the Division shall notify the Company in~~  
21 ~~writing of such work required to be performed by the Company, and~~  
22 ~~shall provide an accompanying statement of the reasons and~~  
23 ~~determinations therefor. The Company shall negotiate in good~~  
24 ~~faith with the Division regarding whether and to what extent such~~  
25 ~~additional work shall be undertaken.~~

1       ~~3. In the event that the Company and the Division reach~~  
2 ~~agreement with respect to any additional, alternative or~~  
3 ~~accelerated workplan, the work undertaken by the Company pursuant~~  
4 ~~thereto shall be governed by the other relevant provisions of~~  
5 ~~this Consent Agreement, including without limitation, the~~  
6 ~~provisions of Section XV (Dispute Resolution). In the event that~~  
7 ~~the Company and the Division are unable to reach agreement with~~  
8 ~~respect to the need for or contents of any additional,~~  
9 ~~alternative or accelerated workplan, the Division and the Company~~  
10 ~~shall be entitled to exercise their rights pursuant to Section~~  
11 ~~XIX (Reservation of Rights).~~

1  
2 **CE. NO FURTHER ACTION.**

3 1. If at any time the Company believes that sampling  
4 results, the performance of other work or other circumstances  
5 demonstrate that, with respect to any affected area at or  
6 associated with the Site, ~~portion of the Site,~~ no further  
7 response actions are required or necessary to protect public  
8 health and the environment, the Company may propose that such  
9 area ~~portion of the Site~~ no longer be subject to the requirements  
10 of this Consent Agreement. If the Division agrees, the Division  
11 shall issue a written notice that the affected area is no longer  
12 subject to the requirements of this Consent Agreement and may be  
13 improved, sold, or otherwise conveyed without further adherence  
14 to the requirements of this Consent Agreement. The Division's  
15 disapproval of or failure to act upon (within a reasonable time)  
16 a proposal made under this Section shall be subject to dispute  
17 resolution under Section XV.

18 2. In making any determination hereunder, the Division may  
19 consider within its statutory discretion any and all relevant  
20 factors including, without limitation:

- 21 a. existing and potential or planned land uses for such  
22 portion of the Site and environmental and human  
23 exposure threats associated therewith;  
24 b. whether the issuance of such written notice would  
25 preclude or significantly and adversely affect the

1 investigation or remediation of perchlorate  
2 ~~Environmental Contaminants~~ at or associated with the  
3 BMI Complex, including the Site;

4 c. the sampling data or other information and  
5 circumstances relied upon by the Company; and

6 d. applicable or relevant and appropriate environmental  
7 cleanup standards (including, without limitation, any  
8 Division policies regarding contaminated soil and  
9 groundwater remediation).  
10

11 The issuance by the Division of a written exclusion notice  
12 hereunder shall not constitute or be construed as either: (1) a  
13 release, covenant not to sue, or any other limitation whatsoever  
14 on the authority of the Division to respond to existing or  
15 subsequently-identified ~~environmental~~perchlorate conditions at or  
16 associated with the Site; or (2) a determination, decision or  
17 opinion regarding the suitability of any particular land use for  
18 the Site.

19 ~~———— F. NEVADA HAZARDOUS WASTE DISPOSAL LAW COMPLIANCE~~

20 ~~1. For purposes of this Section IV.F, the terms "hazardous~~  
21 ~~constituent," "hazardous waste," "landfill," "land treatment~~  
22 ~~unit," "pile" and "surface impoundment" shall have the meanings~~  
23 ~~specified in 40 C.F.R. § 260.10, each as respectively adopted by~~  
24 ~~reference in the Nevada Hazardous Waste Disposal Law program by~~  
25 ~~NAC § 444.8632. The term "Subject Unit" means each landfill,~~

1 ~~land treatment unit, surface impoundment, or waste pile unit~~  
2 ~~located at the Site which received hazardous waste after July 26,~~  
3 ~~1982, or with respect to which closure was certified pursuant to~~  
4 ~~40 C.F.R. § 265.115, as adopted by reference in the Nevada~~  
5 ~~Hazardous Waste Disposal Law program by NAC § 444.8632, after~~  
6 ~~January 26, 1983.~~

7 ~~2. With respect to each Study Item which also is a Subject~~  
8 ~~Unit that was closed by removal or decontamination, the Company~~  
9 ~~shall include in the Environmental Conditions Investigation~~  
10 ~~Workplan required by Section IV.A.1, such tasks as are necessary~~  
11 ~~to demonstrate that the closure met the standards for closure by~~  
12 ~~removal or decontamination in 40 C.F.R. §§ 264.228, 264.230(e),~~  
13 ~~or 264.258, as respectively adopted by reference in the Nevada~~  
14 ~~Hazardous Waste Disposal Law program by NAC § 444.8632.~~

15 ~~3. With respect to each Study Item which also is a Subject~~  
16 ~~Unit that was not closed by removal or decontamination in~~  
17 ~~accordance with the standard specified in the preceding Paragraph~~  
18 ~~2, the Company shall include in the Environmental Conditions~~  
19 ~~Workplan required by Section IV.A.1 such tasks as are necessary~~  
20 ~~to develop the groundwater monitoring and hazardous constituent~~  
21 ~~release characterization information specified in Subpart F of 40~~  
22 ~~C.F.R. Part 264 and 40 C.F.R. § 270.14(c), as respectively~~  
23 ~~adopted by reference in the Nevada Hazardous Waste Disposal Law~~  
24 ~~program by NAC § 444.8632.~~

1 V. PUBLIC PARTICIPATION

2 1. Subject to the provisions of Section XI (Confidential  
3 Business Information), all Deliverables received by the Division  
4 may be made available to the public in accordance with applicable  
5 law. The Division may, at its discretion, conduct a public  
6 notice or comment procedure with respect to any ~~Environmental~~  
7 Perchlorate Conditions Investigation Report or Remedial  
8 Alternatives Study delivered pursuant to this Consent Agreement.

9 The Division shall notify the Company in writing of its  
10 determination to provide for, or legal requirement governing,  
11 public notice or comment with respect to such document as well as  
12 the corresponding adjustment that shall be made to any affected  
13 work or Deliverable submittal or approval schedule. Following  
14 any such notice and comment period, the Division may require the  
15 Company to revise the Deliverable and/or perform reasonable  
16 additional work necessary to address appropriately any issue  
17 regarding such document identified by the public during such  
18 comment period.

19 2. The Company shall comply with, and participate as  
20 required in the implementation of, the Public Involvement Plan as  
21 submitted to and approved by the Division pursuant to Section V.2  
22 (Public Participation) of the BMI Common Areas Phase 2 Consent  
23 Agreement.

24  
25 VI. DELIVERABLES REQUIRING DIVISION APPROVAL

1           1.     After review of any Deliverable which is required to be  
2 submitted for approval pursuant to this Consent Agreement, the  
3 Division shall: (1) approve, in whole or in part the  
4 Deliverable; (2) approve the Deliverable upon specified  
5 conditions; (3) modify the Deliverable to cure deficiencies and  
6 approve the Deliverable as so modified; (4) disapprove, in whole  
7 or in part, the Deliverable, directing that the Company modify  
8 the Deliverable; or (5) any combination of the above. The  
9 Division will provide a written statement of reasons for any  
10 approval with conditions, approval with modifications, or  
11 disapproval. Notwithstanding any other provision of this Consent  
12 Agreement and with respect solely to the first submission to the  
13 Division by the Company of a particular Deliverable, if the  
14 Division either approves the Deliverable upon conditions or  
15 modifies the Deliverable to cure deficiencies and approves the  
16 Deliverable as so modified, then the Company shall be deemed to  
17 have submitted such Deliverable timely and adequately and no  
18 stipulated penalties shall accrue.

19           2.     In the event of approval, approval upon conditions, or  
20 modification and approval by the Division pursuant to the  
21 preceding paragraph, the Company shall proceed to take any action  
22 required by the Deliverable, as approved or modified and approved  
23 by the Division, subject only to its right to invoke the Dispute  
24 Resolution procedures set forth in Section XV (Dispute  
25 Resolution) with respect to the modifications or conditions made

1 by the Division.

2 3. a. Upon receipt of a notice of disapproval pursuant  
3 to paragraph 1 of this Section, the Company shall, within thirty  
4 (30) days, or such later time as may be specified in such notice,  
5 correct the deficiencies in all material respects and resubmit  
6 the Deliverable for approval. Any stipulated penalties  
7 applicable to the Deliverable, as provided in Section XIV, shall  
8 accrue during such thirty (30) day or otherwise specified period,  
9 but shall not be payable unless the resubmitted Deliverable is  
10 disapproved or modified and approved due to a material defect.

11 b. Notwithstanding the receipt of a notice of  
12 disapproval pursuant to paragraph 1 of this Section, the Company  
13 shall proceed, at the written direction of the Division, to take  
14 any action required by any nondeficient portion of the  
15 Deliverable. Implementation of any nondeficient portion of a  
16 Deliverable shall not negate the Division's right to seek  
17 penalties for the deficient portion under Section XIV (Stipulated  
18 Penalties).

19 4. In the event that a resubmitted Deliverable, or portion  
20 thereof, is disapproved by the Division, the Division may again  
21 require the Company to correct the deficiencies in all material  
22 respects, in accordance with the preceding paragraphs. The  
23 Division also retains the right to amend or develop the  
24 Deliverable. In the event that the Division modifies and  
25 approves a resubmitted Deliverable to cure deficiencies pursuant

1 to the preceding paragraph such modification and approval shall  
2 not negate the Division's right to seek penalties for the  
3 deficiencies of the Deliverable as originally submitted as  
4 provided in Section XIV (Stipulated Penalties). The Company  
5 shall implement any such Deliverable as amended or developed by  
6 the Division, subject only to its right to invoke the procedures  
7 set forth in Section XV (Dispute Resolution).

8       5. If upon resubmission, a Deliverable is disapproved or  
9 modified and approved by the Division due to a material defect,  
10 the Company shall be deemed to have failed to submit such  
11 Deliverable timely and adequately unless the Company invokes the  
12 dispute resolution procedures set forth in Section XV (Dispute  
13 Resolution) and the Division's disapproval or modification is  
14 overturned pursuant to that Section. The provisions of Section  
15 XV (Dispute Resolution) and Section XIV (Stipulated Penalties)  
16 shall govern the implementation of the required work and the  
17 accrual and payment of any stipulated penalties during dispute  
18 resolution. If the Division's disapproval or modification is  
19 upheld, stipulated penalties shall accrue for such violation from  
20 the date on which such Deliverable was required.

21       6. Notwithstanding any provision of this Consent Agreement  
22 to the contrary, the Division may not assess any stipulated  
23 penalty hereunder for any period of time associated with Division  
24 review of any Deliverable (including resubmitted Deliverables) in  
25 excess of thirty (30) days from the date such Deliverable was

1 submitted to the Division. Nothing in this paragraph shall  
2 affect the Division's ability to assess stipulated penalties  
3 hereunder for and to the extent any Deliverable (including  
4 resubmitted Deliverables) is not timely submitted.

5 7. All Deliverables or portions thereof and other items  
6 required to be submitted to the Division under this Consent  
7 Agreement shall, upon approval or modification and approval by  
8 the Division, be deemed incorporated into, and enforceable under,  
9 this Consent Agreement as specified in Section XXVIII. In the  
10 event that the Division approves or modifies and approves a  
11 portion of a Deliverable required to be submitted to the Division  
12 under this Consent Agreement, the approved or modified and  
13 approved portion shall be enforceable under this Consent  
14 Agreement as specified in Section XXVIII. Oral advice,  
15 suggestions, or comments given by Division representatives will  
16 not constitute an official approval, nor shall any oral approval  
17 or oral assurance of approval be considered binding.

18  
19 VII. DIVISION APPROVAL OF CONTRACTORS  
20 AND CONSULTANTS

21 1. Except for work performed by employees of the Company,  
22 all work performed pursuant to the Consent Agreement shall be  
23 under the direction and supervision of a professional engineer,  
24 hydrologist, geologist or environmental scientist, ~~with expertise~~  
25 ~~in the investigation and remediation of Environmental~~

1 ~~Contaminants~~ who shall either be or work under the responsible  
2 control of an environmental manager certified under Nevada law.  
3 Work performed by employees of the Company must be reviewed by a  
4 third party consultant acceptable to the Division. Each of the  
5 Company's Contractors shall have the technical expertise  
6 sufficient to adequately perform all aspects of the work for  
7 which it is responsible. Within thirty (30) days following the  
8 Effective Date of this Consent Agreement, and before the required  
9 work begins, the Company shall notify the Division's Project  
10 Coordinator in writing of the names, titles and qualifications of  
11 the engineer, hydrologist, geologist or environmental scientist  
12 and of any Contractors and their personnel proposed to be used in  
13 carrying out the terms of this Consent Agreement. The Company  
14 shall identify whether any Contractor is on the List of Parties  
15 Excluded from Federal Procurement or Non-Procurement Programs  
16 compiled and maintained by the U.S. General Services  
17 Administration or on any analogous list compiled and maintained  
18 by the State.

19 2. The qualifications of Key Project Personnel, including  
20 the principal project manager and, if different, any Certified  
21 Environmental Manager (CEM) undertaking the work for the Company  
22 shall be subject to the Division's review and approval, for  
23 verification that such persons meet minimum technical background  
24 and experience requirements. The Division reserves the right to  
25 disapprove the Company's Key Project Personnel for good cause

1 shown at any time during the effective period of this Consent  
2 Agreement. If the Division disapproves any Key Project Personnel  
3 proposed by the Company to perform work pursuant to this Consent  
4 Agreement, then the Company shall, within thirty (30) days after  
5 receipt from the Division of written notice of such disapproval,  
6 notify the Division in writing of the name, title and  
7 qualifications of any replacement. The Division's disapproval  
8 under this Section shall be subject to review in accordance with  
9 Section XV of this Consent Agreement.

10 3. During the effective period of this Consent Agreement,  
11 the Company shall notify the Division in writing of any changes  
12 or additions in the Key Project Personnel used to carry out the  
13 work required by the Consent Agreement, providing their names,  
14 titles and qualifications. The Division shall have the same  
15 right to approve changes and additions to such persons as it has  
16 hereunder regarding the initial notification.

17 4. For the purposes of this Section, the term "Key Project  
18 Personnel" shall mean those individuals who have primary  
19 responsibility for the direction of employees or subcontract  
20 personnel for major project tasks, outputs or Deliverables  
21 including, but not limited to, data collection, data  
22 interpretation and report writing.

#### 23 24 VIII. QUALITY ASSURANCE

25 1. The Company shall follow EPA and Division guidance for

1 sampling and analysis. Workplans shall contain quality  
2 assurance/quality control (QA/QC) and chain of custody procedures  
3 for all sampling, monitoring, and analytical activities. Any  
4 deviations from the QA/QC and chain of custody procedures in  
5 approved ~~w~~Workplans must be approved by the Division; must be  
6 documented, including reasons for the deviations; and must be  
7 reported in the applicable Deliverable.

8       2. The name(s), addresses, and telephone numbers of the  
9 analytical laboratories the Company proposes to use must be  
10 submitted to the Division for review and approval prior to work  
11 being performed.

12       3. The Company shall use best efforts to ensure that high  
13 quality data is obtained by their Contractor or contract  
14 laboratories. The Company shall require that laboratories used  
15 by the Company for analysis perform such analysis according to  
16 the latest approved edition of "Test Methods for Evaluating Solid  
17 Waste, Physical/Chemical Methods" (SW-846) or other methods  
18 deemed satisfactory by the Division. The Company shall submit  
19 any deviations from the protocols proposed in any ~~w~~Workplan to  
20 the Division for its approval thirty (30) days prior to the  
21 commencement of analyses, except in extraordinary circumstances.  
22 The Division may reject any data that does not meet the  
23 requirements of the approved ~~w~~Workplan or EPA analytical methods  
24 and may require resampling and additional analysis.

25       4. The Company shall ensure that laboratories it or its

1 Contractor(s) use for analyses participate in a QA/QC program  
2 equivalent to that required by EPA under the Contract Laboratory  
3 Program (CLP), unless another program is deemed acceptable to the  
4 Division. As part of such a program, and upon request by the  
5 Division, such laboratories shall perform analyses of samples  
6 provided by the Division to demonstrate laboratory performance  
7 and the quality of analytical data. If the audit reveals  
8 deficiencies in a laboratory's performance or QA/QC, resampling  
9 and additional analysis may be required by the Division.

10  
11 **IX. SAMPLING AND DATA AVAILABILITY**

12 1. All final results of sampling, tests, modeling and  
13 other data (but not including raw data that has not been subject  
14 to QA/QC procedures) generated by the Company, or on the  
15 Company's behalf, pursuant to this Consent Agreement shall be  
16 submitted to the Division in any progress report required by this  
17 Consent Agreement. The Company shall make all raw data available  
18 to the Division for review on request, and shall submit such data  
19 to the Division on written request. The Division will provide to  
20 the Company validated data generated by the Division unless it is  
21 exempt from disclosure by any federal or state law or regulation.

22 2. The Company shall notify the Division in writing at  
23 least five (5) working days prior to conducting sampling  
24 described in any wWorkplan required by this Consent Agreement.  
25 If the Company believes it must commence emergency field

1 activities without delay, the Company may seek emergency  
2 telephone authorization from the Division Project Coordinator or,  
3 if the Division Project Coordinator is unavailable, his/her  
4 Bureau Chief, the Administrator, or the Deputy Administrator, to  
5 commence such activities immediately. At the Division's oral or  
6 written request, the Company shall provide or allow the Division  
7 or its authorized representative to take split or duplicate  
8 samples of all samples collected by or on behalf of the Company  
9 pursuant to this Consent Agreement.

#### 11 X. SITE ACCESS

12 1. At all reasonable times, upon reasonable notice and in  
13 conformance with any health and safety requirements at the Site,  
14 the Division, its Contractors, employees, and/or any duly  
15 designated Division representatives carrying out the authority of  
16 the Division shall have the authority to enter and freely move  
17 about all property at the Site where work, if any, is being  
18 performed pursuant to this Consent Agreement for the purposes of,  
19 *inter alia*: (1) discussing the work being performed under this  
20 Consent Agreement with relevant Company or Contractor personnel;  
21 (2) inspecting conditions, activities, the results of activities,  
22 records, operating logs, and contracts related to the Site or the  
23 Company and their Contractors pursuant to this Consent Agreement;  
24 (3) reviewing the progress of the Company in carrying out the  
25 terms of this Consent Agreement; (4) conducting such tests,

1 sampling, or monitoring as the Division or its authorized  
2 representatives deem necessary; (5) with the written consent of  
3 the Company, which shall not be unreasonably withheld, using a  
4 camera, sound recording device or other documentary type  
5 equipment; (6) verifying the reports and data submitted to the  
6 Division by the Company; and (7) inspecting and copying all  
7 nonprivileged records, files, photographs, documents, sampling  
8 and monitoring data, and other writings or materials related to  
9 work undertaken in carrying out the requirements of this Consent  
10 Agreement. Nothing herein shall be interpreted as limiting,  
11 waiving or otherwise affecting (1) the Division's right of entry  
12 or inspection under state or federal laws; (2) any attorney-  
13 client, work-product or other privilege with respect to any  
14 matter affecting the Company; or (3) the Company's right to seek  
15 confidential treatment of any matter pursuant to applicable law.

16 2. To the extent that the Site or any other property to  
17 which access is required for the performance of work required  
18 under this Consent Agreement is owned or controlled by persons or  
19 entities other than the Company, the Company shall use best  
20 efforts to obtain access to such property for the Company, as  
21 well as for the Division and its authorized representatives,  
22 within thirty (30) working days after the date that the need for  
23 access becomes known to the Company. For purposes of this  
24 paragraph, "best efforts" shall include, at a minimum, a  
25 certified letter from the Company to the present owners of such

1 property requesting access agreements to permit the Company and  
2 the Division, including its authorized representatives, to access  
3 such property, and the payment of reasonable compensation in  
4 consideration of granting access. Any such access agreement  
5 shall be incorporated by reference into this Consent Agreement  
6 upon execution. The Company shall provide to the Division's  
7 Project Coordinator a copy of each such access agreement. In the  
8 event that any necessary agreement for access is not obtained  
9 within thirty (30) days following approval of any ~~W~~Workplan for  
10 which access is required, or following the date that the need for  
11 access became known to the Company, the Company shall notify the  
12 Division thereafter regarding both the efforts undertaken to  
13 obtain access and its failure to obtain such access agreement.  
14 The Division shall cooperate with the Company in obtaining  
15 access, but the Company shall pay any just compensation required  
16 for access as described hereinabove. In the event that the  
17 Division obtains access, the Company shall undertake Division  
18 approved work on such property.

19 3. The Company agrees to indemnify, defend and hold  
20 harmless the Division as provided in Section XVIII  
21 (Indemnification), for any and all claims arising from the  
22 Company's, or its officers', employees', agents' or Contractors'  
23 activities on such property.

24 4. Nothing in this Section or any other provision of this  
25 Consent Agreement shall be construed to limit or otherwise affect

1 the Company's liability and obligations with respect to any  
2 Release at or associated with the Site.

3 ~~5. Notwithstanding any other paragraph in this Section,~~  
4 ~~upon receipt of a written request from the Division specifying~~  
5 ~~the need for access, the Company shall grant any other entity~~  
6 ~~identified in such request which is performing Phase II work with~~  
7 ~~respect to the BMI Complex, including its Contractors and other~~  
8 ~~authorized representatives, the authority to enter and move about~~  
9 ~~the Site at all reasonable times for the purpose of conducting~~  
10 ~~such testing, sampling, monitoring or other work required to be~~  
11 ~~performed by such entity pursuant to such other agreement as has~~  
12 ~~been entered into between the Division and such entity. The~~  
13 ~~Company shall not require payment of compensation in~~  
14 ~~consideration of granting such access. However, granting access~~  
15 ~~may be conditioned upon receiving from any entity seeking such~~  
16 ~~access, written assurances that such access will be reasonable~~  
17 ~~in scope and will be at the sole risk and expense of the entity~~  
18 ~~seeking access, the entity seeking access will comply with the~~  
19 ~~Company's safety rules and regulations and will have (and make~~  
20 ~~reasonable efforts to ensure its Contractors have) reasonable~~  
21 ~~levels of liability insurance in place and will agree to hold the~~  
22 ~~Company harmless from loss, damage or injury caused by its entry.~~

#### 24 XI. CONFIDENTIAL BUSINESS INFORMATION

25 1. All information required by this Consent Agreement will

1 be deemed public information upon submittal to the Division  
2 unless the Company requests in writing at the time of submittal  
3 that specific information be treated as confidential business  
4 information in accordance with NRS § 459.555 or 445.311 and the  
5 Division grants the request. Pending such determination and any  
6 appeals thereof, the Division shall treat such information as  
7 confidential. Any assertion of confidentiality shall be  
8 adequately substantiated in writing by the Company when the  
9 request is made.

10 2. The Company agrees not to assert any confidentiality  
11 claims with respect to any data related to Site conditions,  
12 sampling, or monitoring except in those instances where a Company  
13 official certifies in writing at the time such data is submitted  
14 to the Division that specific data related to Site conditions is  
15 entitled to protection as a "trade secret" pursuant to the  
16 standards set forth in NRS § 459.3846(3)(a)-(d). The Division  
17 shall treat such data as confidential if the Company has  
18 established to the satisfaction of the Division at the time of  
19 the certification submittal that the data is entitled to  
20 protection as a "trade secret" and pending such determination and  
21 any timely appeals thereof.

## 22 23 XII. RECORD PRESERVATION

24 1. The Company shall retain, during the effective period  
25 of this Consent Agreement and for a minimum of ten (10) years

1 following termination of this Consent Agreement, all data,  
2 records, documents, and Deliverables (but excluding drafts,  
3 duplicates and privileged materials) which it now has in its  
4 possession or control or which come into its possession or  
5 control, which relate in any way to this Consent Agreement and to  
6 the management and/or disposal of perchlorate Environmental  
7 ~~Contaminants~~ at the Site as they relate to this Consent  
8 Agreement. Information within the possession or control of the  
9 Company shall include all data, documents and records in the  
10 possession of its divisions, officers, directors, employees,  
11 agents, successors and assigns. After the expiration of such  
12 ten-year period, the Company shall notify the Division, or its  
13 successor, at least ninety (90) days prior to the scheduled  
14 destruction of such data, records, documents or Deliverables and  
15 shall provide the Division or its successor with the opportunity  
16 to take possession of such materials. Such written notification  
17 shall reference the effective date and caption of this Consent  
18 Agreement and shall be addressed to:

19  
20 Nevada Division of Environmental Protection  
21 333 W. Nye Lane  
22 Carson City, Nevada 89710  
23 ATTENTION: Chief, Bureau of Corrective Actions  
24

25 2. The Company further agrees that within thirty (30)

1 days after retaining or employing any Contractor for the purpose  
2 of carrying out the terms of this Consent Agreement, the Company  
3 shall enter into an agreement with such Contractor which requires  
4 such Contractor to provide the Company with a copy of all  
5 Deliverables prepared or produced pursuant to this Consent  
6 Agreement.

7 3. All documents and data required to be maintained by  
8 paragraph 1, other than those documents required for the  
9 operations of any Company, shall be stored by the Company in a  
10 centralized location in the State of Nevada and the Company shall  
11 provide access to such nonprivileged documents and data to the  
12 Division and its authorized representatives.

### 13 14 XIII. REPORTING AND DOCUMENT CERTIFICATION

15 1. Beginning with the first full month following the  
16 Effective Date, and throughout the effective period of this  
17 Consent Agreement, the Company shall provide the Division with  
18 quarterly progress reports. Each progress report shall be filed  
19 with the Division no later than fifteen (15) days after the  
20 conclusion of the quarter for which the report provides  
21 information. Progress reports shall conform to requirements in  
22 the approved ~~w~~Workplan.

23 2. An original and three (3) copies of all Deliverables  
24 concerning the activities performed pursuant to the terms and  
25 conditions of this Consent Agreement, shall be hand delivered;

1 sent by certified mail, return receipt requested; sent by  
2 overnight parcel delivery service; or sent by verified facsimile  
3 transmission to the Project Coordinator at the following address:

4 a. Deliverables or other materials to be submitted to  
5 the Division should be sent to:

6 Nevada Division of Environmental Protection  
7 333 W. Nye Lane  
8 Carson City, Nevada 89710  
9 ATTENTION: Chief, Bureau of Corrective Actions  
10

11 3. Deliverables or other materials to be submitted to the  
12 Company should be sent to:

13 Susan Crowley  
14 Kerr-McGee Chemical Corporation  
15 8000 West Lake Mead Drive  
16 P.O. Box 55  
17 Henderson, Nevada 89009-7000  
18

19 Other addresses also may be designated or approved by the  
20 Division Project Coordinator.

21 4. Any final report prepared pursuant to an approved  
22 Workplan (other than progress reports) submitted by the Company  
23 pursuant to this Consent Agreement shall be certified by a  
24 responsible corporate officer of the Company. A responsible  
25 corporate officer means: a president, secretary, treasurer,

1 general manager, or vice-president of the corporation in charge  
2 of a principal business function, or any other person who  
3 performs similar policy or decision making functions for the  
4 Company.

5 5. The certification required by paragraph 4 above, shall  
6 be executed before and notarized by a notary public and shall be  
7 in the following form:

8 "I certify that this document and all attachments were  
9 prepared in accordance with a system designed to evaluate  
10 the information submitted. I certify that to the best of my  
11 knowledge and belief, formed after due and appropriate  
12 inquiry and investigation, the information contained in or  
13 accompanying this submittal and provided by the Company that  
14 I represent is true, accurate, and complete in all material  
15 respects. I certify that this submittal and all attachments  
16 were prepared in accordance with procedures designed to  
17 assure that qualified personnel properly gathered and  
18 evaluated the information submitted. Based on my inquiry of  
19 the person or persons who manage the system, or those  
20 directly responsible for gathering the information, or the  
21 immediate supervisor of such person(s), the information  
22 submitted and provided by the Company that I represent is,  
23 to the best of my knowledge and belief, true, accurate, and  
24 complete in all material respects. I am aware that there  
25 are significant penalties for submitting false information,  
26 including the possibility of fine and imprisonment for  
27 knowing violations."

28  
29 Signature: \_\_\_\_\_  
30 Name: \_\_\_\_\_  
31 Title: \_\_\_\_\_  
32 Company: \_\_\_\_\_  
33 Date: \_\_\_\_\_  
34  
35

#### 36 XIV. STIPULATED PENALTIES

37 1. Unless there has been a written modification by the  
38 Division of a compliance date, a written modification by the  
39 Division of an approved ~~W~~orkplan condition, or excusable delay

1 as defined in Section XVI (Force Majeure) of this Consent  
2 Agreement, if the Company fails to comply with any term or  
3 condition set forth in this Consent Agreement in the time or  
4 manner specified herein, the Division may assess stipulated  
5 penalties against the Company as set forth hereinbelow. All  
6 penalty amounts set forth herein are maximum amounts. Nothing in  
7 this Consent Agreement shall be construed to limit in any manner  
8 (except as set forth herein) the Division's prosecutorial  
9 discretion with respect to whether to take enforcement action or  
10 to assess less than the maximum penalty associated with any  
11 alleged violation of the requirements of this Consent Agreement.

12 Any stipulated penalties assessed pursuant to this Consent  
13 Agreement shall be the sole penalties assessable by the Division  
14 hereunder against the Company for noncompliance with this Consent  
15 Agreement.

16 a. For failure to submit any Deliverable requiring  
17 Division approval on a timely basis as required by this  
18 Consent Agreement or any approved ~~w~~Workplan:

19	<u>Continuous Period of Noncompliance</u>	<u>Maximum Penalty Per Day</u>
20	1st - 7th day	\$500
21	8th - 21st day	\$2500
22	22nd day and thereafter	\$5000

23 b. For failure to comply with any other provision of  
24 this Consent Agreement, including without limitation,  
25 failure to (i) commence, perform, and/or complete field work

1 in a manner acceptable to the Division or at the time  
2 required pursuant to this Consent Agreement or any approved  
3 ~~w~~Workplan; (ii) complete and submit to the Division any  
4 required ~~w~~Workplans, reports or other written submittals  
5 (other than progress reports) requiring Division approval in  
6 a manner acceptable to the Division as required by this  
7 Consent Agreement or any approved ~~w~~Workplan; or (iii) comply  
8 with Section IV.C.3.

9 Continuous Period of Noncompliance      Maximum Penalty Per Day

10	1st - 7th day	\$500
11	8th - 21st day	\$2500
12	22nd day and thereafter	\$5000

13  
14 Solely with respect to violations described in this  
15 subparagraph 1.b for which the Company has invoked rights to  
16 dispute resolution pursuant to Section XV, the maximum  
17 penalty assessable for any particular continuous period of  
18 noncompliance under this subparagraph 1.b shall be \$253,500.  
19

20 2. Except as otherwise provided herein, all stipulated  
21 penalties shall begin to accrue on the day after complete  
22 performance is due or the day a violation occurs, and shall  
23 continue to accrue through the day that performance is completed  
24 or the violation is corrected. A "continuous period of  
25 noncompliance," for purposes of subparagraphs 1.a and 1.b, means

1 any continuous period during which one or more of the violations  
2 described respectively therein remain uncorrected. The Division  
3 may assess separate stipulated penalties for separate violations  
4 of this Consent Agreement. The stipulated penalties set forth in  
5 the preceding paragraph shall be in addition to any other non-  
6 monetary remedies or sanctions which may be available to the  
7 Division by reason of the Company's failure to comply with the  
8 requirements of this Consent Agreement.

9 3. Following any Division determination that the Company  
10 has failed to comply with the requirements of this Consent  
11 Agreement, the Division may give the Company written notification  
12 of the same and describe the noncompliance. Said notice shall  
13 also indicate the amount of penalties due.

14 4. All penalties owed to the Division under this Section  
15 shall be payable to the State within thirty (30) days after the  
16 Company's receipt from the Division of the notification of  
17 noncompliance, unless the Company invokes the dispute resolution  
18 procedures under Section XV (Dispute Resolution). Penalties  
19 shall continue to accrue during any dispute resolution period,  
20 except that the accrual of such penalties shall be suspended  
21 during any period of time in excess of the 30-day period set  
22 forth in Section XV.5 for the Division to render its decision on  
23 any dispute. Penalties assessed under this Section need not be  
24 paid until thirty (30) days following the resolution of the  
25 dispute pursuant to Section XV if the Division prevails.

1 Interest shall begin to accrue on any unpaid balance at the end  
2 of the thirty (30) day period following notification of  
3 noncompliance. The Company shall pay interest to the Division as  
4 follows: interest shall accrue at the Current Value of Funds  
5 Rate established by the Secretary of the United States Treasury.

6 An additional penalty of 6 per cent per annum on any unpaid  
7 principal shall be paid to the Division for any stipulated  
8 penalty payment which is overdue for ninety (90) or more days.

9 5. All penalties, including interest, shall be made  
10 payable by certified or cashier's check to the State of Nevada  
11 and shall be remitted to:

12 Nevada Division of Environmental Protection

13 333 W. Nye Lane

14 Carson City, Nevada 89710

15 ATTENTION: Chief, Bureau of Corrective Actions  
16

17 All such checks shall reference the name of the Site and the  
18 Company's name and address. Copies of all such checks and  
19 letters forwarding the checks shall be sent simultaneously to the  
20 Division Project Coordinator.

21 6. Neither the initiation of dispute resolution  
22 proceedings nor the payment of stipulated penalties shall alter  
23 in any way the Company's obligation to comply with the terms and  
24 conditions of this Consent Agreement and the attachments hereto.

25 Without modifying Paragraph 4 of Section XIV, the Parties do not

1 intend the preceding sentence to require the Company, during the  
2 pendency of any good faith dispute, to take actions that would  
3 have the effect of mooted the subject of the dispute.

4 7. If the Company fails to pay stipulated penalties, the  
5 Division may institute proceedings to collect the penalties.

6 8. Except with respect to violations for which penalties  
7 are assessable under subsection 1.a of this Section XIV, no  
8 penalties shall accrue until the Company receives a written  
9 notice from the Division identifying the violation, the basis for  
10 the violation, and a reasonable time within which the Company is  
11 required to correct the violation.

#### 12 13 XV. DISPUTE RESOLUTION

14 1. The Parties shall use their best efforts informally and  
15 in good faith to resolve all disputes or differences of opinion.

16 The Parties agree that the procedures contained in this Section  
17 are the sole and exclusive procedures for resolving disputes  
18 arising under this Consent Agreement. If the Company fails to  
19 follow any of the requirements contained in this Section, then  
20 it shall have waived its right to further consideration of the  
21 disputed issue.

22 2. If the Company disagrees, in whole or in part, with any  
23 written determination by the Division pursuant to this Consent  
24 Agreement, the Company's Project Coordinator shall notify the  
25 Division Project Coordinator in writing of the dispute ("Notice

1 of Dispute").

2       3. Any dispute which arises under or with respect to this  
3 Consent Agreement shall in the first instance be the subject of  
4 informal negotiations between the Parties. The period for  
5 informal negotiations shall not exceed thirty (30) days following  
6 the date the dispute arises, unless such period is extended by  
7 written agreement of the Parties. The dispute shall be  
8 considered to have arisen when the Division receives a written  
9 Notice of Dispute.

10       4. In the event that the Parties cannot resolve a dispute  
11 by informal negotiations under the preceding paragraph, then the  
12 position advanced by the Division shall be considered binding  
13 unless, within thirty (30) days after the conclusion of the  
14 informal negotiation period, the Company invokes the formal  
15 dispute resolution procedures of this Section by serving on the  
16 Division Administrator a written Statement of Position which  
17 shall set forth the specific points of the dispute, the position  
18 the Company claims should be adopted as consistent with the  
19 requirements of this Consent Agreement, the basis for the  
20 Company's position, any factual data, analysis or opinion  
21 supporting that position, any supporting documentation relied  
22 upon by the Company, and any matters which it considers necessary  
23 for the Administrator's determination. The Statement of Position  
24 also may include a request for an opportunity to make an oral  
25 presentation of factual data, supporting documentation and expert

1 testimony to the Administrator and to answer questions that the  
2 Administrator may pose. It is within the sole discretion of the  
3 Administrator to grant or deny a request for an oral  
4 presentation.

5       5. Within thirty (30) days following receipt of a  
6 Statement of Position, or by such later date within thirty (30)  
7 days after any oral presentation by the Company as the  
8 Administrator may deem appropriate to adequately address such  
9 oral presentation, the Administrator shall issue his/her decision  
10 which shall be binding on the Company and unappealable unless,  
11 within twenty (20) days after receipt of the decision, the  
12 Company exercises its rights as stated in paragraph 6 of this  
13 Section. The Administrator's written decision shall include a  
14 response to the Company's arguments and evidence. The written  
15 decision of the Administrator shall be incorporated into and  
16 become an enforceable element of this Consent Agreement, and  
17 shall be considered the Division's final decision as provided in  
18 paragraph 6 of this Section.

19       6. As to any final Division decision, the Company may  
20 pursue the dispute before the State Environmental Commission  
21 ("SEC") as a "contested case" pursuant to NRS §§ 233B.010 et seq.  
22 and NAC §§ 445.988 - 445.995, and shall be entitled to both  
23 administrative and judicial review as provided therein.

24       7. Except as provided in Section XIV (Stipulated  
25 Penalties), the existence of a dispute as defined in this Section

1 and the Administrator's consideration of matters placed into  
2 dispute shall not excuse, toll, or suspend any compliance  
3 obligation or deadline required of the Company under this Consent  
4 Agreement during the pendency of the dispute resolution process.

5 Without modifying Paragraph 4 of Section XIV, the Parties do not  
6 intend the preceding sentence to require the Company, during the  
7 pendency of any good faith dispute, to take actions that would  
8 have the effect of mootng the subject of the dispute.

9  
10 **XVI. FORCE MAJEURE**

11 1. The Company shall perform the requirements of this  
12 Consent Agreement within the time limits prescribed, unless the  
13 performance is prevented or delayed by events which constitute a  
14 *force majeure*. The Company shall have the burden of proving such  
15 a *force majeure*. A *force majeure*, for purposes of this Consent  
16 Agreement, is defined as any event arising from causes not  
17 reasonably foreseeable and beyond the reasonable control of the  
18 Company, or of any person or entity controlled by the Company,  
19 which delays or prevents the timely performance of any obligation  
20 under this Consent Agreement despite the Company's best efforts  
21 to fulfill such obligation. A *force majeure* may include:  
22 extraordinary weather events, natural disasters, strikes,  
23 lockouts, national emergencies, delays in obtaining access to  
24 property not owned or controlled by the Company despite timely

1 | best efforts to obtain such access, and delays occasioned by  
2 | PEPCON's failure timely to complete work under PEPCON'S Consent  
3 | Agreement within a timeframe that would allow the Company's work  
4 | to proceed in a manner contemplated by the schedule of the  
5 | Consent Agreement, and delays in obtaining any required approval  
6 | or permit from the Division or any other public agency that occur  
7 | despite the Company's complete, timely and appropriate submission  
8 | of all information and documentation required for approval or  
9 | applications for permits within a timeframe that would allow the  
10 | work to proceed in a manner contemplated by the schedule of the  
11 | Consent Agreement. A *force majeure* does not include (i)  
12 | increased costs of the work to be performed under the Consent  
13 | Agreement, (ii) financial inability to complete the work or (iii)  
14 | normal precipitation events.

15 |       2. If any event occurs or has occurred that may delay the  
16 | performance of the Company's obligations under this Consent  
17 | Agreement, whether or not caused by a *force majeure* event, the  
18 | Company's Project Coordinator or, in his or her absence, a  
19 | responsible corporate official, shall notify orally the  
20 | Division's Project Coordinator or, in his or her absence, the  
21 | Administrator or Deputy Administrator, as the case may be, within  
22 | two (2) business days of when the Company first knew or should  
23 | have known that the event might cause a delay. If the Company  
24 | wishes to claim a *force majeure* event, then within ten (10) days

1 thereafter, the Company shall provide to the Division a written  
2 explanation and description of the obligation(s) delayed or  
3 affected by the *force majeure* event; the reasons for the delay;  
4 the anticipated duration of the delay; all actions taken or to be  
5 taken to prevent or minimize the delay; a schedule for  
6 implementation of any measures to be taken to prevent or mitigate  
7 the delay or the effect of the delay; the Company's rationale for  
8 attributing such delay to a *force majeure* event; and a statement  
9 as to whether, in the opinion of the Company, such event may  
10 cause or contribute to an imminent and substantial hazard to  
11 human health, welfare, or the Environment. The Company shall  
12 include with any notice all available documentation supporting  
13 its claim that the delay was attributable to a *force majeure*.  
14 Failure to comply with the above requirements shall preclude the  
15 Companies from asserting any claim of *force majeure* for that  
16 event.

17 3. The Division shall notify the Company in writing of its  
18 *force majeure* determination within fifteen (15) days after  
19 receipt of the notice from the Company. If the Division  
20 determines that the delay has been or will be caused by  
21 circumstances constituting a *force majeure* event, the time for  
22 performance of the obligations under this Consent Agreement that  
23 are affected by the *force majeure* event will be extended by the  
24 Division in writing for such time as the Division determines is

1 necessary to complete those obligations. An extension of the  
2 time for performance of the obligations affected by the force  
3 majeure event shall not, of itself, extend the time for  
4 performance of any other obligation, unless the Company can  
5 demonstrate to the Division's satisfaction that more than one  
6 obligation was affected by the force majeure event.

7 4. In the event that the Division and the Company cannot  
8 agree that any delay or failure has been or will be caused by  
9 circumstances constituting a force majeure, or if there is no  
10 agreement on the length of the extension, the dispute shall be  
11 resolved in accordance with the dispute resolution provisions set  
12 forth in Section XV of this Consent Agreement.

13  
14 **XVII. REIMBURSEMENT OF DIVISION OVERSIGHT COSTS**

15 1. Following the Effective Date and for the effective  
16 period of this Consent Agreement, the Company(ies) shall  
17 reimburse the Division for costs reasonably incurred for  
18 oversight of this Consent Agreement in the manner prescribed by  
19 Section XVII (Reimbursement of Division Oversight Costs) of such  
20 BMI Common Areas Phase 2 Consent Agreement.

21 2. In the event that the parties obligated thereunder fail  
22 to comply with Section XVII (Reimbursement of Division Oversight  
23 Costs) of the BMI Common Areas Phase 2 Consent Agreement, then  
24 the Company shall be obligated to reimburse the Division for any

1 unpaid oversight costs and expenses as described in Paragraph 1,  
2 and subject to dispute resolution pursuant to paragraph 2, of  
3 said Section XVII that are: (i) not the subject of dispute  
4 resolution proceedings under Section XV of the BMI Common Areas  
5 Phase 2 Consent Agreement; and (ii) attributed to the Company or  
6 the Company's Site in an invoice submitted by the Division as  
7 required by Paragraph 2 of Section XVII of the BMI Common Areas  
8 Phase 2 Consent Agreement. Amounts due under this paragraph  
9 shall be paid by the Company within thirty (30) days after  
10 receipt by the Company of written notice from the Division  
11 indicating the obligated parties' failure to pay and the amount  
12 owing.

13 3. In the event that the BMI Common Areas Phase 2 Consent  
14 Agreement terminates for any reason before this Consent Agreement  
15 terminates in accordance with Section XXX (Termination) hereof,  
16 the Company shall be obligated hereunder to reimburse the  
17 Division for oversight costs and expenses attributed to the  
18 Companies or the Site as described in Paragraph 1, and subject to  
19 dispute resolution pursuant to paragraph 2, of Section XVII  
20 (Reimbursement of Division Oversight Costs) of such BMI Common  
21 Areas Phase 2 Consent Agreement that are incurred by the Division  
22 in the ongoing administration of this Consent Agreement. In that  
23 event, the Division shall submit to the Company a monthly  
24 invoice, commencing with the first full calendar month after the  
25 termination of the BMI Common Areas Phase 2 Consent Agreement,

1 containing the information described in Paragraph 2 of Section  
2 XVII of such BMI Common Areas Phase 2 Consent Agreement. Amounts  
3 due under this section shall be paid within thirty (30) days  
4 after receipt of each invoice by a check payable to the State of  
5 Nevada for the full amount due and owing to:

6 Nevada Division of Environmental Protection

7 333 W. Nye Lane

8 Carson City, Nevada 89710

9 ATTENTION: Chief, Bureau of Corrective Actions  
10

11 All such checks shall reference the name of the Site and the  
12 Company's name and address. Copies of all such checks and  
13 letters forwarding the checks shall be sent simultaneously to the  
14 Division Project Coordinator. Any failure by the Company to  
15 timely make any payment required under this Section shall be  
16 subject to the interest rate specified in Section XIV.

17 **XVIII. INDEMNIFICATION**

18 The Company agrees to indemnify, defend, save and hold  
19 harmless the Division, its Contractors, agents and employees from  
20 any and all claims or causes of action arising from or on account  
21 of acts or omissions of the Company or its officers, employees,  
22 agents or Contractors in carrying out the activities required by  
23 or otherwise pursuant to this Consent Agreement.  
24

25 **XIX. RESERVATION OF RIGHTS**

1 respect to, any claim, cause of action, demand or defense in law  
2 or equity, against any person, firm, partnership, or corporation  
3 for, or in respect of, any liability it may have arising out of  
4 or relating in any way to the generation, storage, treatment,  
5 handling, management, transportation, Release, threatened  
6 Release, or disposal of any ~~perchlorate~~~~Environmental Contaminant~~  
7 at or otherwise associated with the Site.

8       2. Notwithstanding any provision of this Consent Agreement  
9 to the contrary, the Division covenants not to sue the Company  
10 for oversight costs incurred by the Division under this Consent  
11 Agreement in excess of the amounts specified in Section XVII. In  
12 the event the Division undertakes to perform any work required of  
13 the Company under this Consent Agreement, or to issue an order to  
14 the Company to complete such work, the Division covenants not to  
15 sue the Company for any stipulated penalties accruing or  
16 accruable after the date of such undertaking or issuance.

## 17 18                   XXII. OTHER APPLICABLE LAWS

19       All actions required to be taken pursuant to this Consent  
20 Agreement shall be undertaken in accordance with the requirements  
21 of all applicable local, state, and federal laws and regulations.

22       The Company shall obtain or cause its representative(s) to  
23 obtain all permits and approvals necessary under such laws and  
24 regulations.

1 XXIII. PROJECT COORDINATORS

2 1. Within thirty (30) days following the Effective Date,  
3 the Division and the Company each shall designate a Project  
4 Coordinator and shall notify each other in writing of the Project  
5 Coordinator selected. Each Project Coordinator shall be  
6 responsible for overseeing the implementation of this Consent  
7 Agreement and for designating a person to act in his/her absence.

8 The Division Project Coordinator will be the Division's  
9 designated representative for the Site. To the maximum extent  
10 practicable, all communications between the Company and the  
11 Division, and all Deliverables, documents, reports, approvals,  
12 and other correspondence concerning the activities performed  
13 pursuant to this Consent Agreement, shall be in writing and shall  
14 be directed to the appropriate Project Coordinator.

15 2. The Parties shall provide at least seven (7) days  
16 written notice prior to changing Project Coordinators.

17 3. The absence of the Division Project Coordinator from  
18 the Site shall not be cause for the stoppage of work.

19  
20 XXIV. COMPUTATION OF TIME

21 For purposes of computing due dates set forth in this  
22 Consent Agreement, the Effective Date, or the day of the act,  
23 event, or default from which the designated period of time begins  
24 to run, shall be designated and counted as Day zero (0).  
25 Calendar days shall be utilized in computing due dates. The last